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May 21, 2003

BY ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, S.W. - Suite TW-A325
Washington, D.C. 20554

Re: *Ex Parte Presentation*
In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, CG Docket No. 02-278

Dear Ms. Dortch:

On May 20, 2003, Sally McMahon, Lisa Smith and Karen Reidy of MCI, along with A. Richard Metzger, Jr. and Ruth Milkman of Lawler, Metzger & Milkman, counsel for MCI, met with Michelle Carey, William Dever, Erica McMahon and Marcy Greene of the FCC to discuss the above-referenced proceeding. MCI provided a copy of the attached presentation to the FCC staff.

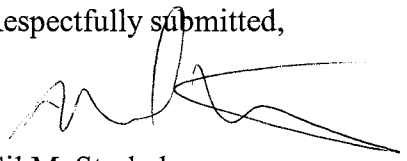
MCI generally emphasized that the Commission should ensure that its implementation of the Do-Not-Call Act[1] does not undermine local competition, which is currently at a nascent and vulnerable stage. MCI suggested that the FCC could achieve this goal most effectively by adopting a definition of the term "established business relationship" (EBR) that would permit every local service provider to telemarket its services to every residential telephone subscriber, unless the subscriber was on the carrier's company-specific do-not-call list. In the meeting, MCI also described alternative approaches to protecting local competition while furthering the goals of the statute. For example, in Illinois, the legislature exempted for three years local service providers from a state prohibition against telephone solicitations to consumers on the state's do-not-call list. A similar result could be achieved by delaying the effective date of the FCC's national do-not-call rules for local service providers for three years, or by creating an exemption for such providers that would sunset in three years. In addition, MCI raised the possibility that the FCC could modify either the FTC or FCC definition of EBR for competitive carriers to include any customer that has taken service from the carrier or its affiliates in the previous five years. MCI noted, however, that under this approach, new entrants would continue to operate under a significant competitive disadvantage.

[1] Do-Not-Call Implementation Act, Pub. L. No. 108-10, 117 Stat. 557 (2003).

MCI also discussed the need to modify the FCC's rules governing company-specific do-not-call lists. For example, MCI suggested that the FCC limit the duration of company-specific lists to five years, consistent with the five-year limit that the FTC applies to its national do-not-call list, and allow carriers to remove from their existing lists names that exceed that maximum. Consumers would, of course, be free to ask to be added to a company-specific do-not-call list at any time. MCI also recommended that the FCC consider providing carriers a one-time opportunity to remove numbers that have been on a carrier's do-not-call list for more than one year as of the effective date of the FCC's new rules, unless a consumer is informed in writing and affirms his/her original request to be placed on the company-specific list.

Pursuant to the Commission's rules, this letter is being provided to you for inclusion in the public record of the above-referenced proceeding.

Respectfully submitted,



Gil M. Strobel

Attachment

cc: Michelle Carey (without attachment)
William Dever (without attachment)
Erica McMahon (without attachment)
Marcy Greene (without attachment)

Considerations for Do-Not-Call Proceeding

Sally McMahon
Vice President, Consumer Affairs and Quality
MCI

May 20, 2003

FCC's Undertaking Is Considerably More Complex Than That of the FTC

- The FCC's rules must be consistent with its multiple statutory mandates
  - TCPA (47 U.S.C. § 227)
  - Local competition provisions of the Communications Act (47 U.S.C. §§ 251, *et seq.*)

- The FCC has the flexibility to act differently than the FTC

- Rush to judgment risks adoption of rules that:
  - Have unintended consequences
  - Need to be amended in subsequent proceedings
  - Lead to unnecessary confusion on the part of consumers and unnecessary costs on the part of carriers
  - Lead to unfair enforcement, especially at the state level

FCC's Do-Not-Call Rules Must Not Undermine Pro-Competitive Goals Of Act

- Goal of Telecom Act of 1996 is to promote competition for local telecommunications services
- The FCC and the states have worked for 7 years to advance local competition
- Implementation of the DNC Act should not create new obstacles for new entrants just as local competition is beginning to take hold

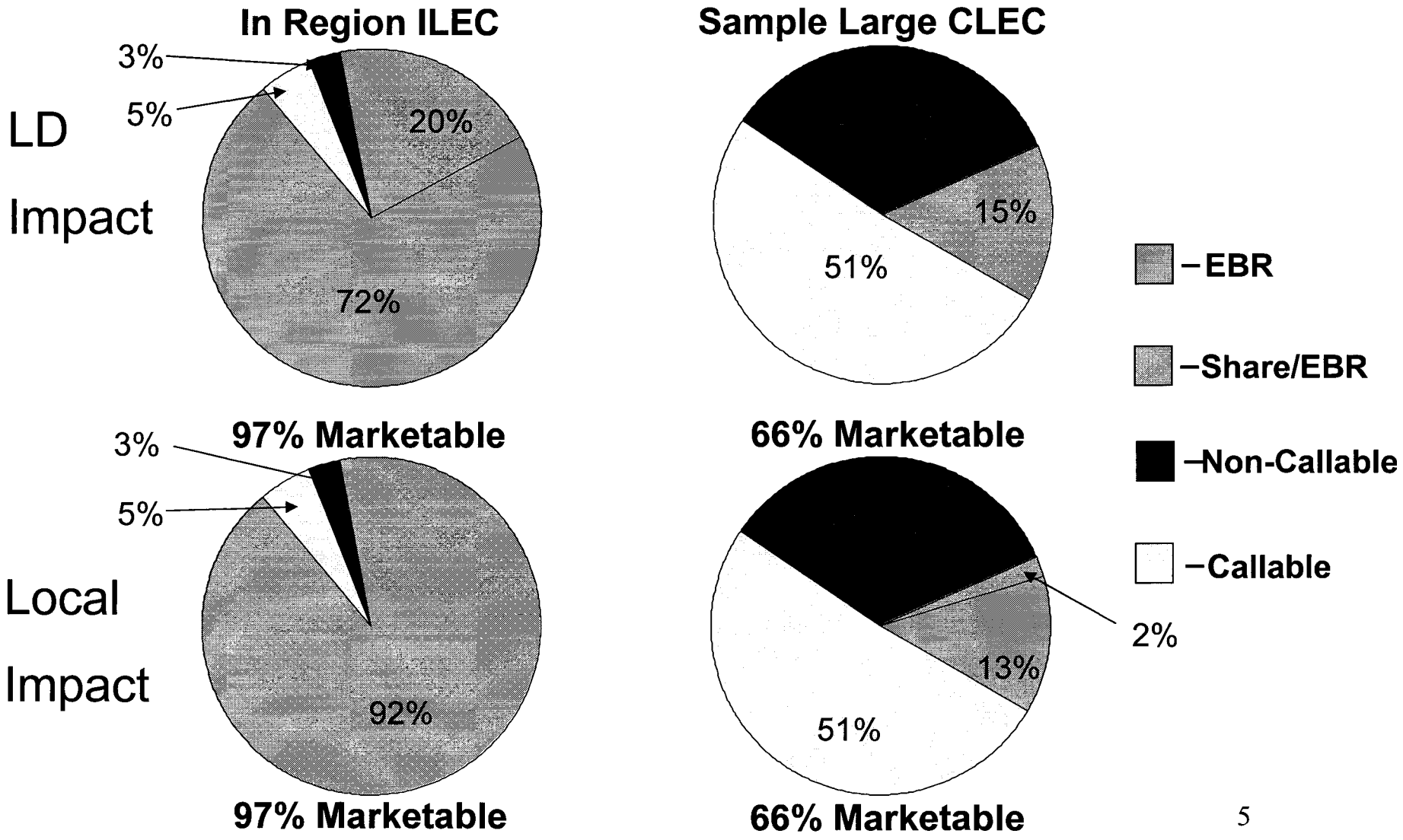
New Entrants' Ability To Reach Consumers Is Key To Promoting Local Competition

- The future of mass market competition is in bundled products, such as MCI's innovative Neighborhood offering and imitations like Veriations

- To compete effectively, new entrants must deliver the bundles that consumers want and play on a level playing field

- Telemarketing is a critical channel for educating consumers about new entrants' offerings
  - Consumers are accustomed to buying telephone service over the phone
  - Only 36 percent of consumers are aware that they have a choice of local carriers, even though 93 percent of U.S. households are in zip codes served by at least one competitor (NRRI survey)

Adopting FTC's EBR Rules Would Hand ILECs a Huge Advantage Due to The Monopoly Heritage



* Assumes that 40% of households register for national DNC list.

FCC Should Use Full Extent of Its Statutory Discretion to Support Local Competition

- All local service providers (new entrants as well as incumbents) should be deemed to have established business relationships with all residential subscribers, until local competition is sufficiently developed
  - This would include any BOC offering competitive out-of-region services
  - If individual consumers prefer not to hear from particular local carriers, they can ask to be put on company-specific do-not-call lists

- Policy imperative is to support local competition, and statutory framework permits the FCC to treat local telephone service differently than other businesses

FCC Must Allow Time Necessary To Ensure That Its Rules Are Implemented Correctly

- At a minimum, the FCC must provide for a nine-month implementation period, similar to that provided by the FTC; a one-year period would be preferable
  - The FCC's rules will apply to entities that were not affected by the FTC's rules
  - Implementation issues are numerous, complex and will not be identified in full until after the FCC adopts its rules
    - Predictive dialers: Companies will have to develop software and systems to demonstrate compliance with any new rules on abandonment rates
    - Caller ID: Companies will have to upgrade switches and CPE to comply with any new Caller ID rules
    - DNC lists: Regulators will have to harmonize state and federal lists and rules

FCC Should Take Time to Think Through Interplay Between State and Federal Rules

- The FCC should clarify that all interstate telemarketing calls fall under the FCC's exclusive jurisdiction

- The FCC must maintain jurisdiction by establishing a national policy
  - Individual states should not be allowed to override the FCC's expert judgment and set *de facto* national standards
  - Inconsistent state and federal rules yield customer confusion and disparate treatment of consumers depending on their residency
  - Multiple avenues for enforcement (FCC, state AG, private cause of action) argue for single national list, and single set of national rules
  - Hodge-podge of state and federal rules is inefficient and unnecessarily burdensome, increasing costs for companies, and ultimately, consumers

National List Offers Opportunity for Fresh Start

- A national list provides an opportunity to ensure that the data is clean and accurate
  - Existing state lists are often inaccurate and have poor "hygiene" -- they should not be dumped into the federal list
  - Sign-up for the federal list is easy and free; using names from the state list is unnecessary
- Goal should be single national list
- FCC should make sure the data stays accurate
  - FCC should require subscribers to provide name and ANI, and should prohibit Internet sign-up
  - National list should be scrubbed frequently for moves, changes and errors
- Company-specific list should also have a time period that is no longer than five years

It Is Unnecessary to Address Caller ID in This Proceeding

- The Do-Not-Call Act does not require the FCC to act on Caller ID
- Current FCC policy strikes the right balance
  - FCC has correctly refused to favor the privacy rights of called parties over those of calling parties
- The market will provide the best solution
  - Consumers can screen calls using their answering machines or subscribe to services such as anonymous-caller blocking
  - Companies will need to send Caller ID, where feasible, in order to have calls received by consumers that refuse to answer anonymous calls
- Caller ID and recorded message
  - Objectives of Caller ID requirement and recorded message requirement are the same; requiring both would be "belts and suspenders"

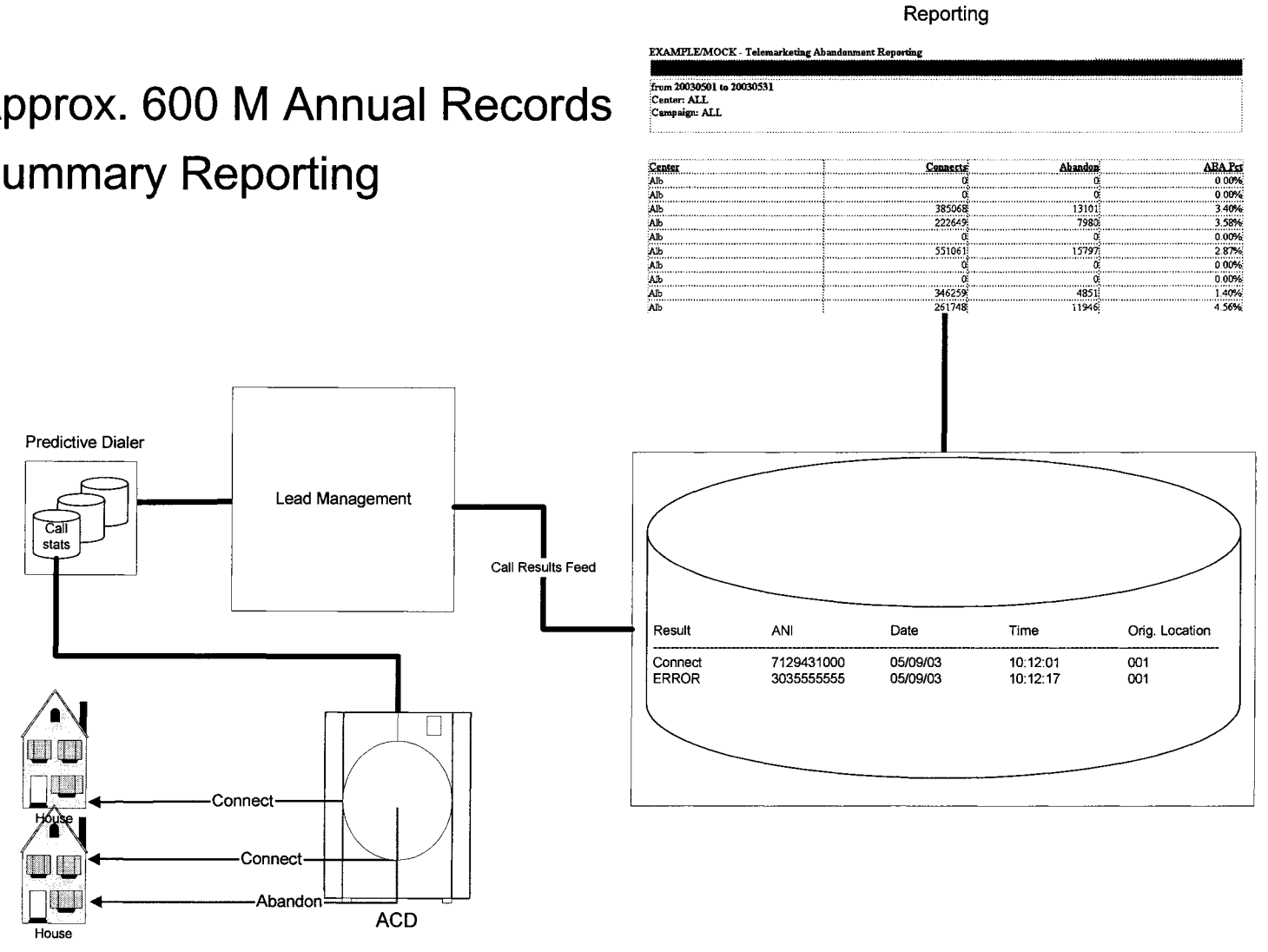
Any Regulation of Predictive Dialers Must Be Reasonable

- Predictive dialers benefit both consumers and marketers
  - Lower risk of error, ensuring that prohibited numbers are not called
  - Vastly improve productivity

- 5% abandonment rate over six-month period should serve as safe harbor in defending claims regarding abandoned calls
  - Record retention should not be unduly burdensome

Tracking Compliance with Abandoned Calls Requirements

- Approx. 600 M Annual Records
- Summary Reporting



Summary

- New do-not-call rules could have a devastating impact on local competition
  - The FCC should take the time necessary to craft rules that are reasonable and consistent with the pro-competitive goals of the Communications Act
- The FCC must establish a national policy
- The FCC need not address Caller ID
- Any regulation of predictive dialers must be reasonable and not unduly burdensome